

November 29, 2011

Jason S. Campbell  
Senior Ethics Officer  
Los Angeles County  
Metropolitan Transportation Authority  
One Gateway Plaza  
Los Angeles, CA 90012

**Re: Your Request for Informal Assistance  
Our File No. I-11-195**

Dear Mr. Campbell:

This letter is in response to your request for advice regarding the honoraria provisions of the Political Reform Act (the “Act”).<sup>1</sup> Because your inquiry is general in nature and does not involve a specific decision, we will treat your letter as a request for informal assistance.<sup>2</sup>

Please note that our advice is based solely on the provisions of the Act. We therefore offer no opinion on the application, if any, of other laws that may apply.

### **QUESTION**

Under the Act, may a public official participate in a fundraising event where a nonprofit organization will auction off a lunch with the official?

### **CONCLUSIONS**

Nothing in the Act prohibit an official from participating in a fundraising event where a nonprofit organization will auction off a lunch with the official. However, a free meal received by the official will be considered a gift and will be reportable if \$50 or more in gifts from a single source.

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The Regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

## FACTS AND DISCUSSION

### *Honoraria*

Section 89502 provides:

“(a) No elected state officer, elected officer of a local government agency, or other individual specified in Section 87200 shall accept any honorarium.

“(b) (1) No candidate for elective state office, for judicial office, or for elective office in a local government agency shall accept any honorarium. A person shall be deemed a candidate for purposes of this subdivision when the person has filed a statement of organization as a committee for election to a state or local office, a declaration of intent, or a declaration of candidacy, whichever occurs first. A person shall not be deemed a candidate for purposes of this subdivision after he or she is sworn into the elective office, or, if the person lost the election after the person has terminated his or her campaign statement filing obligations for that office pursuant to Section 84214 or after certification of the election results, whichever is earlier.

“(2) Paragraph (1) shall not apply to any person who is a candidate as described in paragraph (1) for judicial office on or before December 31, 1996.

“(c) No member of a state board or commission and no designated employee of a state or local government agency shall accept an honorarium from any source if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.

“(d) This section shall not apply to a person in his or her capacity as judge. This section shall not apply to a person in his or her capacity as a part-time member of the governing board of any public institution of higher education unless that position is an elective office.”

Section 89501 defines “honoraria” as any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering.”

You asked whether a public official may be “auctioned off” in non-profit fundraiser. You noted that in 1991, in the *Angel* Advice Letter, No. 1-91-421, the Commission advised that an assembly member may be “auctioned off” in a non-profit fundraiser without violating the Act. However, it appears that you have applied the analysis in one portion of the letter that applied to a different question. The *Angel* letter stated:

“At its May 7, 1991, meeting, the Commission instructed the staff to advise that an official who agrees to speak at an event, but requests or suggests

that a donation be made to a specified charitable organization, will not be deemed to have received an honorarium if all of the following apply: (1) the donation is made directly by the offeror of an honorarium to a bona fide charitable, educational, civil, religious, or similar tax-exempt, nonprofit organization; (2) the filer or public official does not make the donation a precondition for his or her speech, article, or attendance; (3) the filer or public official does not claim the donation as a deduction for income for tax purposes; and (4) no substantial part of the proceeds will have a material financial effect on the filer or public official. (Citations omitted.) Under these circumstances, no honorarium is "accepted" by the state officer nor is there a payment made 'in consideration' for the state officer's speech, article, or attendance. Consequently, when Assemblyman Vasconcellos declines an honorarium, he can suggest that a donation be made to a nonprofit organization if all of the criteria summarized above are met."

However, in response to the auction question, the *Angel* letter simply stated: "Nothing in the Act prohibits Assemblyman Vasconcellos from participating in a fundraising event where a nonprofit organization will auction off a 'lunch with John Vasconcellos.'" The letter provided no further analysis.

Reviewing the facts of that letter it appears that the basis for the conclusion is that there was no honoraria in the first instance. Honoraria, as noted above, is defined as any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering. Under the facts of the *Angel* Advice Letter there was no payment to the Assembly member for attendance at any public or private conference, convention, meeting, social event, meal, or like gathering.

### *Gifts*

Having said that there is no honoraria issue with the auction in question, we still must look at whether anything involved in those facts are considered a gift. The free meal subsequently provided to the official for his lunch with the winning bidder is a gift from the nonprofit, but it would most likely be valued at less than \$50. Of course, a series of gifts from a single source would be aggregated. So if for example, an official did this every month for the same nonprofit, all those meals must be aggregated. If in fact the free meals do value over \$50 you should contact us for further advice.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini  
General Counsel

By: John W. Wallace  
Assistant General Counsel  
Legal Division

JWW:jgl

## LEGAL DIVISION ASSIGNMENT SHEET

TRACKING NUMBER: 11366

ITEM DESCRIPTION	
	Advice Letter [No 11195. , Requestor Campbell, Jason ]
	Opinion Request [No. _____, Requestor _____]
	Regulation Project [No. _____]
	Public Records Act Request [No. _____, Requestor _____]
	Committee Termination Extensions/Reopening [Requestor _____]
	Conflict of Interest Code Exemption Request [Requestor _____]
	Other [_____]

DUE DATE 11/17/2011

ASSIGNED TO: Bill

Chair Review	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	YES	NO		

TRACKING/APPROVAL						
Received by FPPC on: 10/18/11			Date to Assignee: 10/19/11			
REVIEWERS	DATE TO REVIEW	1st APPROVAL & DATE (Incl. Regulation Prenotice Memos)	DATE TO REVIEW	2nd APPROVAL & DATE (Incl. Regulation Notices)	DATE TO REVIEW	FINAL APPROVAL & DATE (Incl. Regulation Adoption Memos)
Proofed						
Senior						
Assistant General Counsel						
General Counsel						
Executive Director						
Chair						